

10th Annual Meeting

**Ulaanbaatar, Mongolia
24-26 August 2005**

NHRIs & the Prevention of Torture and other forms of ill-treatment

Mongolia

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Article 16 of Mongolian Constitution stipulates: “No one shall be subjected to torture or to inhuman, cruel or degrading treatment. Compelling a person to testify against himself/herself shall be prohibited.”

According to this provision of the Constitution, torture is considered to be a crime and prohibited by Criminal Code and Criminal Proceedings Laws.

However, there are violations torture, inhuman treatment, and forced affidavit. It is no exaggeration to say that there is no independent public body which to fight against torture, reveal such cases and make guilty persons accountable.

According to Mongolian legislation, prosecutor organizations are responsible for control over the case registration and investigation process. Therefore, it is a duty of prosecutor organizations to reveal violations concerning torture and other inhuman treatment and take appropriate measures. National Human Rights Commission considers that prosecutor organizations do not fulfill their duties in due manner.

Investigation Department that is responsible for investigating for cases related to judges, prosecutors and police officers was established in September 2002 under General Prosecutor’s Office. However, there is no official was punished on crimes of torture and inhuman treatment. Although prosecutor organizations in all level and Investigation Department receive many complaints against the above officials, the cases are annulled on bases that the case is not established or reconciled with victims.

Therefore, it is very important for National Human Rights Commission to fight against torture, reveal violations and make its efforts to direct attention of state and public to torture.

Since its establishment, National Human Rights Commission has carried out the following activities in regard to revealing and prevention of the above violations.

1. A study was undertaken whether Mongolian legislation is consistent with UN Convention against torture (CAT) or cruel, inhuman or degrading treatment or punishment and prevention mechanism is efficient and effective.

For this purpose, we, at National Human Rights Commission acquainted with new draft laws to be adopted and give proposal, analysed the valid laws and acts, and prepared recommendations.

- Mongolia joined the Convention against torture on November 2, 2000. Criminal and Criminal Proceedings laws and a set of laws concerning activities of legal bodies (law enforcement bodies) were revised and adopted at the beginning of 2002.

Particularly, National Human Rights Commission submitted 20 proposals on new Criminal and Criminal Proceedings laws. Thus 80% of the Commission's proposals were realized. It is praiseworthy that hearing of the Commission's opinion on new drafts laws by parliament and Government is becoming traditional.

- Commission made its conclusion whether newly adopted Criminal and Criminal Proceedings laws are in consistent with Convention against torture, and it concluded in Commission's Report on human rights and freedoms in Mongolia of 2002, 2003 and 2004 respectively. These reports were submitted to State Great Hural and Government.
- In its annual report for 2003, the Commission condemned Government that its report on implementation of Convention against torture was not prepared and provisions 2,4,10,15 of the Convention not being implemented. As a result, Government's report on implementation of the Convention has been prepared.
- The Commission's report for 2002 included its summary of some provisions of new Criminal, Criminal Proceedings laws. For example, period of total detention is prescribed to be 30 months, for minors up to 18 months, basis for imprison is broadened and it is possible to imprison any one any way. It was noted in the report that it is inhuman punishment. The Commission is working closely wit the Working group to amend the laws and making its efforts to considerably reduce detention period for women and minors. The Commission has forwarded it proposal to relevant organizations to join the Protocol Additional to the Convention against torture.

2. One of directions of our work is to bring conditions of arrest and detention centers into conformity with international and national legislation, conduct inspection at these places of detention as well as to fight against torture.

From its establishment, the Commission paid substantial attention to improvement of the conditions of arrest and detention centers.

- The Commission has conducted inspection at Gantshudag detention center in 2002, in all detention centers throughout the country in 2004 and the relevant summarizing report delivered. It is already 7 years as the LDCSD had been adopted in 1997 and this law had formulated the standard requirements of detention premises. So far this standard is lacking absolutely.
- According to the above-mentioned law, detention centers should have window and ventilation hole looking out. There are 22 detention sites in the country and 431 detention centers, of which barely 41 (10%) has window and ventilation hole looking out. Around 90% of detention centers are positioned in the underground, i.e. on ground zero and has no window and ventilation hole looking out, no sunlight and wind. Of course, lack of air-conditioning, natural light access, and pure water heavily influence their health. Log-term imprisonment in such condition may form torture.

Due to severe condition in detention centers, prisoners have to loose weight, get tuberculoses and other respiratory illness or have poor sight. It is happened that someone loses life.

During Human rights open days organized by the Commission in aimags, we conducted an inspection at detention centers to reveal cases concerning torture. Every inspection is aimed at eliminating the violations revealed and provide appropriate recommendations. The Commission considers improvement of detention centers' condition is one of directions of its whole activities to fight against torture.

3. In order to catch the attention of public bodies and officials, determine situation of torture and improve preventive measures of torture, the Commission is implementing one year public inquiry under the theme of "Prohibition of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment"

Public inquiry covers Ulaanbaatar and 8 aimags and the following activities have been carried out:

- make conclusion whether Mongolian legislation, administrative decisions and rules and regulations adhered in the activities of law enforcement agencies are the appropriate mechanism of prevention of torture.
- Organize meeting with court, prosecutor, advocate, and police officers on torture and to gather information.
- Receive complaints and petitions of organizations and individuals and make conclusion. If necessary, make inquiries and take appropriate measures.
- Be acquainted with the information, complaints and cases, which are examined by prosecutor and Investigation Department and make a conclusion.
- Conduct inspection at detention centers to determine conditions and medical examination of prisoners. Talk to prisoners to hear their information and complaint and take appropriate measures.
- Organize open discussion on torture with participation of victims, individuals and law enforcement agencies. Recently, such discussions were held in Ulaanbaatar city, Darkha-Uul, Tuv and Selenge aimags.

In connection with the public inquiry information, promotion and advertising activities are organized. For instance:

- In order to introduce Convention against torture and national legislation to citizens, 4 kind of short advertisements were broadcasted through national TV.
- Advertisement is periodically put through the place named "Human rights and torture" in one of the national dailies "Odriin sonin".
- 30 minute television transmission "Human rights and torture" with participation of UN Special Rapportuer, public officials, NGOs and torture victims was organized.
- Chief Commissioner and members were interviewed on torture 20 times through national TV, radio and dailies.

Some organizations and individuals such as Representative office of Amnesty International in Mongolia, Association of Mongolian Advocators and Human rights and development center expressed their thanks for the Commission's efforts for fighting against torture.

The final objectives of the public inquiry are:

- To determine torture circumstances in Mongolia.
- To establish the reason for torture.
- To establish methods of fighting against torture and make a conclusion.
- Analyze current legislation.

Based on investigation results, the following measures will be taken:

- Commission's report for 2006 will be prepared on torture only. State Great Hural has decided that Commission's annual reports will be discussed at its Sessions from 2006. It shows that the legislator gives an importance to the Commissions annual reports.

Therefore, the Commission's work to bring torture and inhuman treatment situation in Mongolia to the notice of the legislator is very important itself. In this regard, State Great Hural will make certain decisions on this.

- Related proposals and recommendations will be developed and submitted to Government, ministries and agencies.
- Investigation report will be published, disseminated and advertised through mass media and introduced to public.

It is one of the Commission's broad-scale activities oriented on a certain right. I would like to note that some international organizations and consultants have made a significant assistance in this.

4. One of preventive measure is to explain or introduce Convention against torture and national legislation and aimed at application of international treaties and conventions as the national legislation.

- International treaties and Conventions to which Mongolia is a party are valid as the national legislation. Constitution stipulates that if international agreements and Conventions contradict with the national legislation, international treaties and Conventions prevailed. However, it was noted that the provisions of international treaties and Conventions are not applied to Mongolian court and the Commission has find out the reason. The reason is that international treaties and Conventions to which Mongolia is a party not published in "State Gazette" so that it impossible for the court to apply to them according to legislation. The court is not empowered to apply to laws and acts those are not officially published.

The Commission has published an official translation of 57 international treaties and Conventions in 2 special issue of "State gazette" in collaboration with Ministry of

Foreign Affairs, Ministry of Justice and Home Affairs and Secretariat of State Great Hural. So it will be possible for the court to apply to them as the national legislation.

- The Commission's training and seminars for court, prosecutor, police and advocate officers aimed at prevention of torture.

In collaboration with General Police Department, the Commission has organized one day training for police officers of all districts under the theme of "Criminal Procedure and human rights". The training emphasized on Convention against torture and human rights violations in criminal procedure.

- The Commission has also published a translation of Combat Torture -A Manual for Action published by Amnesty International and disseminated to officers of law implementing agencies. It was very important step in introduction of international methods and experiences of combating torture.
- According to Criminal proceedings law from September 2002, the judge exclusively decides the order for arrest and detention. The new jurisdiction will benefit to the cause of human rights beyond doubt and fully correspond with the principles of international Conventions Mongolia had entered so far. For the purpose of promotion of human rights and implementing the above-mentioned provisions, one day training was organized for all judges who are responsible for decision on arrest and detention. The training emphasized on turn towards human rights in arrest and detention, avoid long-term imprisonment, decision with participation of persons involved in a crime and his/her advocate, condition of detention centers in Mongolia and international standard requirements.

Training for judges was also aimed at application of international treaties and Conventions and their explanation.

- In 2005, 2 days training was organized for deputy prosecutors of aimag prosecutor's offices who in charge of case registration and investigation procedure. Main topics of the training were: prevention of torture, inspection of torture violations and make officials concerned accountable and application of Convention against torture.

There is a brief overview of the Commission's activities on prevention of torture. These activities will be intensified.

Thank you for your attention.